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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—NOS. 73 AND 74

POSTAL STEAMSHIP CORPORATION, OWNER OF STEAMSHIP EASTERN GLADE,

Petitioner,

vs.

STEAMSHIP EL ISLEO, SOUTHERN PACIFIC COMPANY,

Respondent.

POSTAL STEAMSHIP CORPORATION,

Petitioner,

vs.

SOUTHERN PACIFIC COMPANY,

Respondent.

BRIEF FOR SOUTHERN PACIFIC COMPANY, RESPONDENT

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POSTAL STEAMSHIP CORPORATION,
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SOUTHERN PACIFIC COMPANY,
Respondent.

BRIEF FOR SOUTHERN PACIFIC COMPANY, RESPONDENT

Statement

This case was brought before this Court by Postal Steamship Corporation, owner of steamship *Eastern Glade*, on certiorari to the Circuit Court of Appeals for the Second Circuit, which affirmed a final decree of the District Court for the Southern District of New York

dismissing petitioner's libel and an interlocutory decree in favor of Southern Pacific Company, owner of steamship *El Isleo*, against petitioner's steamship *Eastern Glade*. Both suits were to recover for damages to the respective vessels resulting from a collision which occurred near the junction of Curtis Bay and Fort McHenry Channels in the approach to Baltimore Harbor in the afternoon of December 19, 1935.

The opinion of the Circuit Court of Appeals is reported at 101 F. (2d) 284, and that of the District Court at 20 F. Supp. 375.

Facts

At about 5 P. M. in the evening of December 19, 1935, respondent's steamship *El Isleo* left the terminal at Sparrow's Point, Baltimore,* bound for Ruckert's Terminal, Baltimore. The weather was clear, tide ebb. The master and an officer were on the bridge; a wheelman was at the wheel, and a seaman was on the bow standing lookout. *El Isleo* proceeded up Brewerton Channel and turned into Fort McHenry Channel, which is a straight channel 4½ miles long and 600 feet wide, except at the anchorage grounds, where it is wider. This channel is intersected by Curtis Bay Channel, which is about two miles long and 450 feet wide, as shown on chart respondent's exhibit 1** (R. 17-19, 195-6, 207).

As *El Isleo* was proceeding up Fort McHenry Channel the green side light of steamship *Eastern Glade* was

* Marked B on chart respondent's exhibit 1.

** A reproduction of the section of Fort McHenry and Curtis Bay Channels is appended to this brief marked Appendix B, showing the relative positions of the channels, the positions of the vessels as they approached and the place of collision outside of and to the east of Fort McHenry Channel.

sighted over a mile away on *El Isleo's* port bow. The *Eastern Glade* was proceeding down Curtis Bay Channel toward Fort McHenry Channel; the position of the *Eastern Glade* at this time is indicated with the letter F on chart marked Exhibit A-McDonald. It is marked A[1] on Appendix B. In this situation *El Isleo* was showing the *Eastern Glade* her red side light and the vessels were red to green and on crossing courses; the *Eastern Glade* was the burdened vessel and bound to keep out of the way of *El Isleo*, whereas *El Isleo* was the privileged vessel and bound to keep her course and speed* (R. 20-2, 25-6; 42-44, 146-8; 197-8).

The *Eastern Glade* sounded a two-blast whistle signal which in the language of the sea was a request for permission from *El Isleo* to surrender her right of way and permit the *Eastern Glade* to continue on out of Curtis Bay Channel and into Fort McHenry Channel and across *El Isleo's* bow. Concededly she had no right under the navigation rules to cross *El Isleo's* bow without *El Isleo's* consent. *El Isleo* promptly answered the *Eastern Glade's* proposal with four blasts, followed immediately by one blast, which signals announced to the *Eastern Glade* that *El Isleo* refused to surrender her right of way, that she (*El Isleo*) would continue on up the channel, and that the *Eastern Glade* (which under the rules was bound to hold back and avoid crossing ahead) should remain in Curtis Bay Channel and not emerge into Fort McHenry Channel until *El Isleo* had passed. These whistle signals from *El Isleo* were acknowledged by the *Eastern Glade*, which replied with four blasts,

* The applicable rules of navigation are set forth in Appendix A attached to this brief.

followed by one blast,* meaning that she would hold back in the channel, as the rules required her to do and as her master admitted he intended to do.** However, instead of remaining in the channel, as her signals announced and as her master testified he intended to do, the *Eastern Glade* continued on out of Curtis Bay Channel and into Fort McHenry Channel just as *El Isleo* was passing the junction of the channels (R. 20-3; 169; 198-201; 282).

As petitioner's navigation, contrary to her signals and contrary to her master's intention, brought about danger of collision, *El Isleo* put her rudder hard right and swung out of Fort McHenry Channel to her own starboard in an attempt to get away from the *Eastern Glade*. However the latter continued on across Fort McHenry Channel and brought her stem into collision with *El Isleo* about amidships on her port (left) side. The place of collision is indicated on Appendix B attached to this brief.

Petitioner's former version of the collision

Originally it was contended by petitioner that upon seeing *El Isleo's* lights proceeding up Fort McHenry Channel, the *Eastern Glade* stopped her engines and after a short interval sounded a signal of two blasts; that *El Isleo* did *not* answer the two-blast signal, but about two minutes later sounded four blasts, followed by one

* Petitioner is mistaken in saying that this was not in *El Isleo's* pleadings (Brief, p. 7). See *El Isleo's* answer Article III, R. 4, lines 7 and 8.

** The *Eastern Glade's* master says that he answered with three blasts (R. 148; 282), which in effect means much the same thing, i.e., three blasts under the rules announces that "My engines are going full speed astern" and could mean only that she would remain in the channel where she belonged. See Article 28, Appendix A.

blast, whereupon the *Eastern Glade* answered with four blasts, stopped her engines and then went full speed astern (R. 14; 43-4; 51-2; 78-9). Her master said he blew three blasts (R. 148; 282).

The master of petitioner's vessel never intended the *Eastern Glade* to emerge from Curtis Bay Channel, but on the contrary intended to remain in the channel to permit *El Isleo* to pass, but due to a "miscalculation" on his part his vessel proceeded faster than he expected, and emerged from Curtis Bay Channel and into collision with *El Isleo* (R. 148-9, 152-3, 168-9).

Petitioner's pleadings alleged, and its witnesses testified, that the collision occurred on the *western* side of Fort McHenry Channel close to Buoy 7-M (marked with letter Y on Appendix B attached to this brief), whereas the collision actually occurred, as petitioner now concedes, directly across and outside the channel to eastward, as the Courts below found (R. 124-5, 151-2, 156-7; 203-4; 267-9; 282-3).

These discrepancies between petitioner's original case and its present contentions go to the very heart of petitioner's case because the facts upon which petitioner relied have been resolved against it by the Court below. Petitioner now contends that the only question is whether *El Isleo* had the right (a) to sound a one-blast signal in answer to petitioner's signal of two blasts; and (b) to maintain her course and speed until it became evident to her master that the *Eastern Glade* alone could not or would not avoid collision (Petition, pp. 2, 4; brief, pp. 2, 7).

We shall show that *El Isleo* did have the right to sound a one-blast signal and to maintain her course and speed.

Opinions below

Both Courts below found that the vessels were on crossing courses and that the petitioner's vessel (*Eastern Glade*) was the burdened one, and that the collision occurred outside and to eastward of the channel, as shown on Appendix B attached to this brief (R. 282-3).

Both Courts found that petitioner's vessel was at fault for not holding back in Curtis Bay Channel until respondent's vessel had passed (R. 268, 283).

Both Courts also agreed that the respondent's vessel acted prudently under the circumstances (R. 268-9, 284).

POINTS

I. The collision was due to the "miscalculation" of the master of petitioner's vessel (*Eastern Glade*) in emerging from Curtis Bay Channel contrary to his intention.

In spite of the assertions in petitioner's brief to the contrary, Inspectors' Rules II and VII, upon which petitioner relies, had nothing to do with this collision which was caused solely by the admitted "miscalculation" of the master of petitioner's vessel following an exchange of whistle signals between the vessels. The signals exchanged were perfectly understood on both vessels and had the *Eastern Glade* navigated in conformity to the exchange of whistle signals, no collision would have occurred.

The *Eastern Glade's* master admitted that he never intended the *Eastern Glade* to emerge from Curtis Bay Channel, to say nothing of going out into Fort McHenry Channel, crossing it and coming into collision with a vessel on the other side of Fort McHenry Channel. He

admitted further that the whole trouble was due to the "miscalculation" on his part because of the "darkness". Indeed, as he said, he "expected" *El Isleo* to pass the intersection of the two channels *before* the *Eastern Glade* got there, but he kept on too long and brought about the collision. His testimony is as follows:

"Q. Well, according to your calculations, *El Isleo* would have gotten up to (buoy) 7 M before you got out in the channel, and there would be no trouble at all? A. That is what I expected.

Q. But it turned out that you got up there just about the same time he did? A. Yes.

Q. So that either he must have slowed or stopped his engines, or else your speed must have been greater that you thought it was? A. No.

Q. Then what do you think upset your calculations? A. Darkness.

Q. It was just a miscalculation? A. Miscalculation.

Q. But you had no intention of doing anything except holding back and letting him go on up the channel and fall in astern of him and you go up? A. Right.

Q. At any time, did you have any intention of doing otherwise? A. No" (R. 168).

The Court below accordingly found that it was never intended by the master of petitioner's vessel to leave Curtis Bay Channel and that the collision was due to her master's "miscalculation". As the Court said:

"The master testified that he never intended to come out of Curtis Bay at the time *El Isleo* was passing and that the whole trouble was due to the miscalculation on his part because of darkness" (R. 267).

The Circuit Court of Appeals came to the same conclusion (R. 282-3).

Furthermore, petitioner's vessel not only emerged from Curtis Bay Channel contrary to her master's intention,

but she went clear across and outside Fort McHenry Channel. As the Court below said:

"'The *Eastern Glade*, although her master testified that he intended to hold back in Curtis Bay Channel until *El Isleo* had passed the junction, came clear across Fort McHenry Channel and brought her stem into contact with the port side of *El Isleo* about amidships. The place of collision was east of Fort McHenry Channel. The District Court did not determine how far to the east, but McDonald testified it was about 200 yards'' (R. 282-3).

It thus appears that petitioner's vessel not only was navigated contrary to her master's intention but that she failed to do what her whistle signals announced she would do even on her master's story, which is that the *Eastern Glade* answered *El Isleo's* four blasts followed by one with three blasts, which means "my engines are going full speed astern" (R. 148; 282). Petitioner even now argues that the *Eastern Glade* promptly reversed her engines at this time (Petition, p. 3; brief, p. 8). On the contrary, the log of petitioner's vessel demonstrates conclusively that she did *not* go astern promptly as petitioner asserts. Her log* shows that her engines were operated as follows:

5:31	Full ahead
5:34	Stop
5:38	Full astern (collision 5:40)

Even on the testimony of petitioner's master who marked on the chart (Exhibit 9) the position of the *Eastern Glade* when he says her engines were stopped at 5:34, she was then about ½ a mile from the place of collision. As the log shows, her engines remained *stopped* for four minutes (5:34 to 5:38) notwithstanding the admitted fact that it was only shortly after 5:34 that the

* *Eastern Glade* exhibit 1 (R. 116).

exchange of whistle signals was made with *El Isleo*.* No explanation has been offered for petitioner's failure to reverse her engines for these four minutes. Obviously putting her engines astern immediately would have had the effect of holding the vessel back in Curtis Bay Channel.

That the *Eastern Glade* was "flying light" and hard to handle, which is admitted, does not excuse her (R. 35-6). Indeed, it was all the more reason why she should have held back in Curtis Bay Channel until *El Isleo* had passed. She was drawing only six to seven feet and her bow was well out of water. She was so high at the stern that her propeller was half out of water. In other words, in her light condition the wind and tide, which was adverse, considerably affected her manoeuvring ability. Both of these forces were combined against the *Eastern Glade*. Her quartermaster admitted that he had a hard time swinging her bow up into the wind (R. 61; 95-6, 100).

What obviously happened was that the *Eastern Glade* was unable to come around in the face of the wind and tide against her port bow and was carried across Fort McHenry channel and when she tardily reversed her engines her bow swung round to starboard and into collision with *El Isleo*, which had swung out of the channel in an attempt to avoid her (R. 125; 151).

It may be that there was something the matter with the *Eastern Glade's* steering gear. Although her witnesses have denied that there was anything wrong, it is singular that within 24 hours after her collision with *El Isleo* the *Eastern Glade* collided with a pier in Baltimore Harbor (R. 70-1; 117-18). In any event, whether the unintentional emergence of the *Eastern Glade* into

* *El Isleo* answered the *Eastern Glade* immediately (R. 21-2; 199).

Fort McHenry Channel, as *El Isleo* was proceeding up the channel, was due to "miscalculation" of the *Eastern Glade's* master, "darkness", some defect in her steering gear or bad handling, the responsibility is the same. It rests solely upon the *Eastern Glade* as the Courts below found (R. 267-8).

In *The Flemington*, 204 Fed. 980 (C. C. A. 2), the Court held the *Flemington* at fault because she "came out under a momentum that she was unable to check".

See also *The Columbia*, 205 Fed. 898 (C. C. A. 2).

II. The rules governing this collision are contained in Articles 19, 21, 22 and 23 of the Inland Rules of Navigation.*

All agree that as *El Isleo* was proceeding up Fort McHenry Channel and *Eastern Glade* was proceeding down Curtis Bay Channel the *Eastern Glade* was showing *El Isleo* her green light only and *El Isleo* was showing *Eastern Glade* her red light only of her side lights (R. 25-6; 43-4; 147-9; 196-8).

Each was on a definite course and their courses were crossing so that *Eastern Glade* had *El Isleo* "on her own starboard side" and petitioner's vessel was bound to keep out of the way (Article 19)*. As her chief officer admitted, the *Eastern Glade* was required to "keep clear" of *El Isleo* (R. 76-7).

In this situation, before any signals were sounded, the *Eastern Glade's* intended course was unknown to those on *El Isleo*. Only her apparent course was known to *El Isleo's* navigators, which was down Curtis Bay

* The Navigation Rules are set forth in Appendix A attached to this brief.

Channel toward the intersection of that channel with Fort McHenry Channel. The *Eastern Glade* might have been intending to turn to the right and go down Fort McHenry Channel, or she might have been intending to cross Fort McHenry Channel and go to an anchorage on the easterly side of the channel, or turn to the left and go up the channel in the same direction as *El Isleo*. The first of these possibilities; viz., turning to the right to go down Fort McHenry Channel was eliminated by the *Eastern Glade's* two-blast signal, which meant to those aboard *El Isleo* that the *Eastern Glade proposed* to cross *El Isleo's* bow (R. 21-2, 32-3; 216-17; 283).

Strangely enough the master of petitioner's vessel was erroneously navigating under the International Rules instead of the Inland Rules, which are applicable to these waters. Although he admitted that his two-blast signal announced to *El Isleo* that the *Eastern Glade* proposed to cross *El Isleo's* bow (as provided under the applicable Inland Rules), he had previously said that at the time he blew the signal he had in mind a different rule, to wit: Article 28 of the inapplicable International Rules (R. 169-70).

The Court below said:

"Evidently from the foregoing (referring to the testimony of petitioner's master) it would appear that the *Eastern Glade's* master was navigating under the International Rules, which apply to ocean and foreign waters, rather than Inland Rules" (R. 267).

Nor is the situation changed because the *Eastern Glade intended* to round buoy 7-M* and proceed up Fort Mc-

* Marked with letter Y on Appendix B.

Henry Channel.* In *The Boston* Socony, 63 F. (2d) 246 (C. C. A. 2), the Court said:

"That she [*Socony*] intended to turn at the buoy is wholly immaterial; it cannot be successfully maintained that she was merely manoeuvring while she was holding a steady heading over the half-mile distance between her pier and the buoy" (p. 247).

It was the relative positions of the two vessels at the time when the signals were first exchanged which governed the situation.

The District Court accordingly held that:

"*El Isleo* had a right to proceed in the manner that she did and it was incumbent upon the *Eastern Glade* to keep out of the way of *El Isleo*. She should have remained in Curtis Bay Channel until *El Isleo* passed. The reason for her emergence into Fort McHenry Channel is immaterial" (R. 268). See also Court's remarks, R. 265-6.

The Circuit Court of Appeals agreed, saying:

"It is not disputed that *El Isleo's* course up Fort McHenry Channel was always apparent to the *Eastern Glade*. But the latter's course was not immediately apparent to *El Isleo;* * * *. When, however, she (*Eastern Glade*) sounded her two-blast signal, she indicated an intention either to cross the bows of *El Isleo* by proceeding across Fort McHenry Channel, or to turn to the left and proceed up the channel. The former alternative would clearly result in crossing courses; the latter would result in convering courses, since the *Eastern Glade's* course, if projected, would carry her into the starboard lane of Fort McHenry Channel, unless she violated her duty by going up on the wrong side. Such converging courses involve the very risk that resulted in the collision, and the rights and duties of the vessels were governed by Articles 19, 22 and 23 of the Inland Rules" (R. 283).

* It is now conceded by petitioner that the *Eastern Glade* never accomplished this but crossed the channel and passed out of it on the east side where the collision occurred.

The authorities amply sustain the conclusion of the Courts below.

The Breakwater, 155 U. S. 252, 263-4; *The Oregon,* 158 U. S. 186, 202; *The Haven Belle Seminole,* 85 F. (2d) 939 (C. C. A. 4); *The West Point,* 85 F. (2d) 63 (C. C. A. 2); *The Albano,* 1907 A. C. 193, 203, 205.

III. The two-blast whistle signal by petitioner's vessel (burdened) gave her no additional right. It was merely a proposal by the burdened vessel to cross the privileged vessel's bow which proposal was rejected by the privileged vessel.

The burdened vessel (petitioner's here) may not shift the burden or obtain relief from her duty to "keep out of the way" under Article 19 by blowing a two-blast whistle signal, as petitioner contends here. To do so would make the privileged vessel the burdened vessel merely by the action of the burdened vessel blowing first, which would vitiate the rules and bring about collisions instead of preventing them.

As Addison Brown, *J.*, said in *The Nereus,* 23 Fed. 448, a leading case:

"A steamer bound to keep out of the way of another steamer by going to the right, under the inspector's regulations, has no right when under no stress of circumstances, but merely for her own convenience, to give the other steamer a signal of two whistles, importing that she will go to the left, unless she can do so safely by her own navigation, without aid from the other, and without requiring the other steamer to change her course or her speed. Otherwise she would be imposing upon the latter steamer more or less of the burden and the duty of keeping out of the way, which by statute is imposed on herself. When two blasts are given under such circumstances, the steamer bound to keep out of the way thereby in effect says to the other: 'I can keep out of your way by going ahead of you to the left, and will do so if you do nothing to thwart me; do you assent?' " (p. 455).

Admittedly *El Isleo* did not assent to the *Eastern Glade's* two-blast proposal. On the contrary, *El Isleo* sounded four blasts followed by one blast, announcing that *El Isleo* refused to yield her right of way, as the Court below found (R. 284). But notwithstanding the privileged vessel's refusal to yield her right of way as she had the right to do, the *Eastern Glade* continued on for six minutes, according to her chief officer (R. 52). Although to make sure that a collision would occur, petitioner's vessel not only emerged from Curtis Bay Channel but completely crossed Fort McHenry Channel and collided with *El Isleo* outside of the channel on the opposite side where *El Isleo* had gone in an attempt to get away from the *Eastern Glade* (R. 268-9; 282-3). Measured on the chart she covered between ½ and ¾ of a mile before the collision occurred, viz. it is ½ mile from position S to collision and ¾ mile from B' to collision (Appendix B).

We fully appreciate that petitioner would have the Court believe that the mere sounding of a two-blast signal by the burdened vessel, which concededly was "unacceptable" to the privileged vessel, made it an exception to the rule and required the privileged vessel to act contrary to the rules. In other words the contention is that she (privileged vessel) should have stopped and reversed her engines, although the rules required her to keep her course and speed (Petition, pp. 2, 4; brief, pp. 2, 7). On the contrary, the Courts have made exceptions to the rules with reluctance and with great caution; indeed, only when imperatively required by special circumstances, which do not obtain here. As this Court has said, under ordinary circumstances a vessel discharges her full duty and obligation to another by a faithful and literal observance of the rules. In *The Oregon*, 158 U. S. 186, the Court said

"As before stated, they [*the collision rules*] are regarded as sufficient protection for a vessel under ordinary circumstances; * * * Exceptions to these rules, though provided for by rule 24 [old number, now 27] should be admitted with great caution and only when imperatively required by special circumstances of the case. It follows that, under all ordinary circumstances, a vessel discharges her full duty and obligation to another by a faithful and literal observance of these rules" (p. 202).

In *The Breakwater*, 155 U. S. 252, the Court said:

"In this connection counsel for the *Breakwater* claims that rule 19, requiring in the case of crossing steamers, that the one having the other upon her starboard side shall keep out of the way of the other, has no application. We think, however, the rule became obligatory from the moment the *Pavonia* got under way, when it became her duty to keep her course and speed, and that of the *Breakwater* to avoid her. *The Britannia*, 153 U. S. 130. It was said by this court in the case of *The Pacific*, (*New York, &c. Steamship Co.* v. *Rumball*), 21 How. 372, 384, and *The Wenona*, 219 Wall. 41, 52, that 'rules of navigation, such as have been mentioned, are obligatory upon vessels approaching each other, from the time the necessity of precaution begins, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid the danger remain' " (p. 263).

See also *Commonwealth & Dominion Line* v. *U. S.*, 20 F. (2d) 729 (C. C. A. 2); *Nordpol-Condor*, 84 F. (2d) 3 (C. C. A. 2); *The Pocomoke*, 150 Fed. 193 (E. D. Va.); *The Ada-Sappho*, 1 Asp. M. C. 475.

It is well settled that when the burdened vessel decides to "keep out of the way" by keeping on instead of holding back, the burdened vessel *assumes the risk* involved in choosing that method.

In *The Lexington*, 275 Fed. 279 (C. C. A. 2), the burdened vessel was held solely at fault for a collision with

the privileged vessel, notwithstanding the two-blast proposal by the burdened vessel was answered by the privileged vessel. The Court there said:

"Those in charge of the *Keeler* knew that under the rules the *Lexington* was the privileged vessel entitled to keep her course and speed. But they chose to speculate upon what they thought the *Lexington* would do, and so the burdened vessel kept right on, and, when she discovered her mistake, undertook to cross the *Lexington's* bow. In doing so she took the risk of the venture" • • •

"It was the duty of the *Keeler* to keep out of the way of the *Lexington*, and there was nothing in the circumstances which prevented here from doing so. But she did not do so and undertook to cross ahead of her. The collision was the result. The fault was that of the *Keeler*" (p. 284).

In *The Greenpoint*, 31 Fed. 231 (S. D. N. Y.), a collision in New York Harbor between vessels on crossing courses after an exchange of two-blast signals, initiated by the burdened vessel, the Court (Addison Brown, *J.*) said:

"The *Greenpoint's* (privileged vessel) answer by two blasts to the *Grand Republic's* previous signal of two blasts • • • did not of itself change any of the legal obligations of the *Greenpoint*, nor shift the burden of keeping out of the way, under the old rules of navigation relating to harbors; nor did it relieve the *Grand Republic* of her duty to keep out of the way by her own maneuvers alone, nor guaranty the success of her maneuvers. *City of Hartford*, 11 Blatchf. 72; *The Garden City*, 19 Fed. 529, 531; *The Garlick*, 20 Fed. 649; *The Payne*, 20 Fed. 650" (pp. 231-2).

See also: *The Thielbek*, 241 Fed. 209, 215 (C. C. A. 9); *The Piankatank*, 87 F. (2d) 806 (C. C. A. 4); *The Fred B. Dalzell, Jr.*, 45 F. (2d) 580 (C. C. A. 2).

IV. Respondent's vessel (*El Isleo*) was justified in refusing to yield her right of way and sounding a one-blast signal.

After setting forth the facts and the applicable rules, the Court below held that *El Isleo* was justified, as the privileged vessel, in refusing to yield her right of way, saying:

"So viewed, no fault appears in the navigation of *El Isleo*, the privileged vessel. To the two-blast signal of the *Eastern Glade* Captain Korn (of *El Isleo*) responded with an alarm followed by one blast to indicate his refusal to yield his right of way" (R. 284).

The Court then went on to discuss the *Fulton* case, which did not involve a "crossing situation" but a "meeting situation," and discussed the well established rule that in a "crossing situation" the privileged vessel (*El Isleo* here) was not bound to agree to a two-blast signal from the burdened vessel.

Petitioner argues that inasmuch as Rule II of the Supervising Inspectors forbids the sounding of "cross signals", *El Isleo* violated that rule when she sounded a one-blast signal following the *Eastern Glade's* two-blast proposal to cross *El Isleo's* bow (Petition, p. 4; brief, p. 7). This argument rests upon a misconception of Rule II; the words "cross signals" in that rule apply to two vessels in a "meeting situation", neither being privileged. In that situation where one vessel sounds a one-blast signal Rule II forbids an answering signal of two blasts, which is known as a cross signal or *vice versa*. However, in a "crossing situation", which concededly was the situation in the instant case, the *Eastern Glade's* two-blast signal means only (coming from the burdened vessel bound to keep out of the way) "I propose to cross your bow if

you give me your consent." The answer was clear and beyond misunderstanding; it was four blasts followed by one blast, meaning a refusal to yield the right of way. As the Court below said:

"To the two-blast signal of the *Eastern Glade* Captain Korn (master *El Isleo*) responded with an alarm followed by one blast to indicate his refusal to yield his right of way" (R. 284).

And this is in accord with this Court's decision in *The Delaware*, 161 U. S. 459. In that case it was said of an alleged conflict between the Inspectors Rules and the Navigation Rules:

"In this connection, the *Talisman* was charged with a violation of the Supervising Inspectors' rules, in not porting her helm and directing her course to starboard after sounding her first signal. These rules, however, so far as they require the whistle to be used, are applicable rather to vessels meeting end on or nearly end on, and the signals therein provided for are designed to apprise the approaching vessel of the intention of the steamer giving the signal, to port or starboard, as the case may be. As applied to vessels upon crossing courses, however, it means, when a single blast is given by the preferred steamer, nothing more than that she intends to comply with her legal obligation to keep her course, and throw upon the other steamer the duty of avoiding her. Such was evidently the view taken by both parties in this case, as there is not the slightest evidence that the pilot of the *Delaware* was misled by these signals, nor is a failure to port charged in the answer, or suggested in the testimony, as a fault on the part of the *Talisman*. These rules, so far as they require whistles to be used, ought to be construed in harmony with the International Code. If they were so construed as to require the preferred vessel to port, after having blown a blast of her whistle, it would involve a violation of article 23, which requires her to keep her course. On the other hand, if they be construed as applying chiefly to steamers meeting end on, or nearly end on, under Rule 18, they would frequently aid in solving any doubt with regard to the proposed course of the vessel giving the signal, and thus enable the meeting vessel to

govern her own course accordingly. Certainly the rules should not be construed to require the steamer giving the signal to violate a plain statutory rule of navigation" (pp. 466-7).

So here *El Isleo* announced that she was keeping on and for *Eastern Glade* to hold back i.e. she announced that she was complying with her "legal obligation" to "hold her course and speed". The *Eastern Glade* replied with four blasts and one blast (R. 23; 200; 282).* This meant that irrespective of the original proposal by the *Eastern Glade*, an agreement had been reached whereby the *Eastern Glade* would hold back and grant to *El Isleo* the privilege to which she was entitled. Indeed, this is in accordance with what the *Eastern Glade's* master testified he actually intended, to wit: remain in the channel (R. 168).

Petitioner's contention amounts to a claim that Inspectors Rule II modifies the Navigation Rules imposing upon the privileged vessel the affirmative duty of "keeping her course and speed" (Rule 21, U. S. C., Title 33, Section 206). That such was not the intention of the Inspectors Rules is indicated by the wording of Rule VII, dealing with the "crossing situation" wherein it is provided that the privileged vessel "hold her course and speed". The rule reads in part:

"the steam vessel which has the other on her port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop and reverse."

The Inspectors could not have done otherwise, for no administrative body has authority to repeal or modify any statute enacted by Congress.

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*Her master says three blasts, which means "My engines are going full speed astern" (R. 148; 282).

In *The Transfer No. 15,* 145 Fed. 503 (C. C. A. 2), the Court said:

"It is suggested that the tug had no business to give a cross-signal, such suggestion being apparently with reference to the Inspectors' rule forbidding the use of such signals. That rule (rule III, as amended January 25, 1899) is by its terms restricted to 'vessels approaching each other from opposite directions,' and does not cover vessels on crossing courses, as these were, where under the steering and sailing rules one is burdened and the other privileged. There is nothing which forbids either of such vessels, while still at a safe distance from the other, to propose a modification of some indicated maneuver. Moreover, as we pointed out in The John King, 49 Fed. 469, C. C. A. 319, when under the steering and sailing rules a vessel has the right to make a particular maneuver, she cannot be deprived of such right by any rule of the Inspectors forbidding her to sound a signal which would indicate her intention to make that particular maneuver. The power of the inspectors to make rules is restricted to such as are 'not inconsistent with the provisions of [the] Act of June 7, 1897, c. 4, 30 Stat. 96 [U. S. Comp. St. 1901, p. 2875],' adopting regulations for preventing collisions upon harbors and inland waters. See section 2 of that act (30 Stat. 102 [U. S. Comp. St. 1901, p. 2884])" (p. 504).

In *The John H. Starin,* 162 Fed. 146 (C. C. A. 2), the construction of Pilot Rule II was before the Court, which held that the rule was framed so as not to conflict with the Navigation Rules, and even if it were, the Navigation Rules, not the Supervising Inspectors' rules, are of superior authority. The Court said:

"We do not agree with her counsel in construing pilot rule II as allowing the burdened vessel to abrogate article 22, by blowing a signal which indicates an intention to cross ahead, when the circumstances of the case admit of her crossing behind. The latter part of the rule would seem to indicate that it was framed so as not to be in conflict with the articles, and, if it were, the articles, and

not the rules, are of superior authority. The John King, 49 Fed. 469, 1 C. C. A. 319" (p. 147).

Reading Co. v. *Sabine Transportation Co.*, 91 F. (2d) 112 (C. C. A. 3); *The John King*, 49 Fed. 469 (C. C. A. 2); *The Pawnee*, 168 Fed. 371 (S. D. N. Y.). Certainly the rule "should not be construed to require the steamer giving the signal to violate a plain statutory rule of navigation." *The Delaware*, 161 U. S. 459.

Moreover, entirely aside from petitioner's contention as to the applicability of Rule II, the *Eastern Glade* was not in any way misled by *El Isleo's* signal. Nor can it be said that the collision in any way resulted therefrom. On the contrary, the collision was due solely to the failure of the *Eastern Glade* to remain in Curtis Bay Channel, as she was required to do by the Navigation Rules.

It has been held again and again that when a vessel has no right to pursue a particular course without receiving the consent of the other vessel, the whistles which she uses in an attempt to obtain that assent are mere invitations to an agreement, contrary to the usual passing. The mere signaling first does not give the burdened vessel any special privilege, or impose on the other vessel any special burden. Clearly it does not reverse the normally applicable rules. The burden cannot be shifted from the burdened to the privileged vessel without her consent.

In *The John H. Starin*, 162 Fed. 146 (C. C. A. 2), the situation was somewhat the same. The Court said:

"The *Jamaica* was the burdened vessel, and was required to keep out of the way of the *Starin*, and to avoid crossing ahead of her if the circumstances of the case admitted. Act June 7, 1897, c. 4, arts. 21, 22, 30 Stat. 101 (U. S. Comp. St. 1901, p. 2883). We are at a loss to see what circumstances there were which did not admit of her executing such maneuver. Instead of doing so, she per-

sisted in crossing ahead, although, as her own pilot testifies, three successive two-blasts whistles which she blew, indicating thereby a wish to navigate otherwise than in accord with article 22 (The George S. Shultz, 84 Fed. 510, 28 C. C. A. 476; The New York, 86 Fed. 814, 30 C. C. A. 628), were each responded to with a single-blast whistle, which was a distinct refusal to enter into any agreement to modify the requirements of the article" (pp. 146-7).

See also: *The Ashley*, 221 Fed. 423 (C. C. A. 2); *The Scranton*, 221 Fed. 609 (C. C. A. 2); *The Haida*, 191 Fed. 623, affirmed 196 Fed. 1005 (C. C. A. 2); *The Cygnus*, 142 Fed. 85 (C. C. A. 2); *The Chicago*, 125 Fed. 712 (C. C. A. 2); *The George S. Schultz*, 84 Fed. 508 (C. C. A. 2); *The John King*, 49 Fed. 469 (C. C. A. 2); *The Norfolk*, 297 Fed. 251 (D. C. Maryland).

In other words, the privileged vessel is entitled to assume that although the burdened vessel may first propose to shift the right of way, it will, if such proposal be rejected, conform to the rules of navigation. *L. Boyers & Sons v. U. S.*, 195 Fed. 490 (C. C. A. 2).

The Fulton, 54 F. (2d) 467 (C. C. A. 2), relied upon by petitioner (Brief, p. 8), did not involve a "crossing situation"; it was a "meeting" or head-on situation where there is no privilege such as there is in a "crossing situation". As the Court there clearly stated:

"In a number of decisions involving crossing situations we have exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed. * * * Our reasoning has been, that, as the statute (Inland Rules) article 21 (33 U. S. C. A. § 206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, but it is plain that the inspectors have never assented to it" (p. 468).

The Boston Socony, 63 F. (2d) 246 (C. C. A. 2), the same Court said:

"Rule III of the Supervising Inspectors Rules is relied upon as imposing a duty to signal; but in our opinion that rule cannot be construed as applying to vessels on crossing courses. Whether it would be valid if it were so construed, we need not say" (p. 248).

This is not an instance of a blind following of judicial precedent in the face of changed conditions, as petitioner would have the Court believe. Nothing has happened which makes it necessary or even advisable to permit the burdened vessel to vitiate the rules by sounding two blasts for a crossing to which she is not entitled. On the other hand, there is no particular significance in giving the privilege to the vessel having the other on her port bow. The rule probably would work just as well if the privilege was given to the vessel having the other on her starboard bow. However, it is important to have definite, well understood traffic rules at sea as well as ashore. These rules now are well understood notwithstanding petitioner's criticism because of their ancient origin. If they are to accomplish their purpose rather than to make confusion, they must be strictly enforced as the Courts have enforced them in the past. As this Court said with reference to Article 19 in *The Breakwater*, 155 U. S. 252:

"Where rules of this description are adopted for the guidance of seaman who are unlearned in the law and unaccustomed to nice distinctions, exceptions should be admitted with great caution, and only when imperatively required by the special circumstances mentioned in rule 24 (now 27), which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger. The moment the observance or non-observance of a rule becomes a matter of doubt or discretion, there is manifest danger, for the judgment of one

pilot may lead him to observe the rule, while that of the other may lead him to disregard it" (p. 264).

In *Belden* v. *Chase*, 150 U. S. 674, the Court said:

"Obedience to the rules is not a fault even if a different course would have prevented the collision, and the necessity must be clear and the emergency sudden and alarming before the act of disobedience can be excused. Masters are bound to obey the rules and entitled to rely on the assumption that they will be obeyed, and should not be encouraged to treat the exceptions as subjects of solicitude rather than the rules. The Oregon, 18 How. 570" (p. 699).

V. Respondent's vessel (*El Isleo*) was required under the Navigation Rules (Article 19) to keep her course and speed.

Petitioner, although admitting that the two-blast proposal by the *Eastern Glade* to cross *El Isleo's* bow was "unacceptable" to *El Isleo*, raises the following two questions:

(1) "Should she (*El Isleo*, privileged vessel) maintain her course and speed until it becomes evident to her master that the first vessel alone cannot or will not avoid collision?"

(2) "Or should she (privileged vessel) conform to the objective standards set up by the Supervising Inspectors defining the situation as one of immediate danger, and obey their injunction to stop and back if necessary until an understanding has been reached?" (Petition, p. 2).

We shall answer these two questions under separate headings.

Petitioner's first question

The answer to this question (1) is in the affirmative because it was not only the privilege and the right, but the *duty* of *El Isleo* (privileged vessel) to "keep her course

and speed". She could not stop or stop and reverse her engines because in the first place she would thereby be violating her duty to keep her course and speed, and in the second place she would be speculating upon what the burdened vessel would do. *El Isleo's* navigators were entitled to presume that the *Eastern Glade* would act lawfully and not fail in her duty to stop and reverse and refrain from emerging from the channel, as her master admitted he intended to do and as her whistle signals announced she would do. *The Victory* and *The Plymothian*, 168 U. S. 410, 426.

If *El Isleo* were at liberty to speculate upon the possibility of the *Eastern Glade* failing to do her duty, the certainty that the privileged vessel will hold her course, upon which the burdened vessel has a right to rely, and which it is the very object of the rules to insure, would give place to doubts on the part of the master of the burdened vessel and produce timidity and feebleness of action on the part of both which would bring about more collisions than it would prevent.

In *The Delaware*, 161 U. S. 459, the Court said:

"The cases of *The Britannia*, 153 U. S. 130, and *The Northfield*, 154 U. S. 629, must be regarded, however, as settling the law that the preferred steamer will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her by porting, at least in the absence of some distinct indication that she is about to fail in her duty. If the master of the preferred steamer were at liberty to speculate upon the possibility, or even of the probability, of the approaching steamer failing to do her duty and keep out of her way, the certainty that the former will hold his course, upon which the latter has a right to reply, and which it is the very object of the rule to insure, would give place to doubts on the part of the master of the obligated steamer as to whether he would do so or not, and produce a timidity and feeble-

ness of action on the part of both, which would bring about more collision than it would prevent * * *" (p. 469).

To the same effect see *Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454.

In *The Piankatank*, 87 F. (2d) 806 (C. C. A. 4), the Court said:

"Where two courses are open to a vessel, and particularly to the privileged vessel, one to follow the prescribed rules and the other to depart from them, the duty is imperative to observe the rules, and to assume that an approaching vessel will do likewise, until after the danger has become so manifest as to show that there is no proper choice of judgment other than that of departing from the rules. Any other course would lead to confusion and be a most prolific source of accidents. Indeed the rule is so imperative that it does not give a navigating officer any general latitude as to obeying the rules, and permits a departure only when necessary to avoid immediate, and not remote or problematical, danger, and then only to the extent required to accomplish that object. *Laboyteaux, supra*, p. 172. Furthermore, a departure from the rules would place upon the privileged vessel the burden of proving that in doing so it came within the protection of the article" (p. 810).

In *The Boston*, 277 Fed. 36 (C. C. A. 2), the Court said:

"It is not only the right, but the duty, of a privileged vessel to hold her course and speed until a departure from the rule is necessary to avoid immediate danger. *The Binghamton*, (C. C. A.) 271 Fed. 69; *Yang-Tze Ass'n, etc.*, v. *Furness*, 215 Fed. 859, 132 C. C. A. 201. And, as was said in *The Binghamton, supra*, the fact that subsequent events show that stopping and backing on the part of the privileged vessel would have avoided collision does not prove negligence" (p. 40).

See also *The Haida*, 191 Fed. 623; affirmed, 196 Fed. 1005 (C. C. A. 2); *The West Point*, 85 F. (2d) 63, 65 (C. C. A.

2); *The Elizabeth*, 197 Fed. 160 (C. C. A. 2); *The Florence*, 68 Fed. 940; affirmed, 89 Fed. 1015 (C. C. A. 2).

In *The New York*, 175 U. S. 187 (Petitioner's brief, p. 12), the privileged vessel misled the burdened vessel as to her course. She first ported and then starboarded and brought about a situation of danger.

Petitioner's second question

(2) "Or should she (privileged vessel) conform to the objective standards set up by the Supervising Inspectors, defining the situation as one of immediate danger, and obey their injunction to stop and back if necessary until an understanding has been reached?" (Petition, p. 2).

The answer to this question is in the negative, both because *El Isleo* (privileged vessel) was required to "keep her course and speed" under Article 19 and because the alleged "injunction" of the Supervising Inspectors "to stop and back", as it is put by petitioner, is only "if necessary until an understanding has been reached." It was not necessary here, as an understanding had been reached.

Inspectors' Rule VII, upon which petitioner relies, by its own terms requires *El Isleo* to keep her course and speed and petitioner's vessel to "keep out of the way" and if necessary to do so, slacken speed, stop or reverse. Notwithstanding these restrictions on petitioner's vessel, petitioner claims that when *El Isleo* refused to agree to petitioner's proposal to cross her bow, she should have stopped (Brief, p. 7). In *The Britannia*, 153 U. S. 130 (Petitioner's Brief, p. 10), the privileged vessel, in the position of *El Isleo* here, was held at fault for stopping. In other words, the privileged vessel was held at fault for doing exactly what petitioner would have the privileged vessel do in this case.

Nor can petitioner obtain any comfort from the last paragraph of Rule VII which provides:

"If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood".

There is nothing there which requires the privileged vessel, under the circumstances here, to stop and back as petitioner argues. Petitioner's master "*expected*" *El Isleo* to continue on. As he testified:

"Q. Well, according to your calculations, *El Isleo* would have gotten up to (buoy) 7 M before you got out in the channel, and there would be no trouble at all? A. That is what I expected (R. 168).

And there was nothing in the conditions here to prevent "immediate compliance" with the signals exchanged. The vessels were over a mile apart when they sighted each other (R. 282). Petitioner's proposal to yield the right of way was declined immediately. There was no danger of collision provided petitioner's vessel remained in Curtis Bay Channel as her master intended doing (R. 168). Moreover petitioner's master announced by whistle signal that he understood the situation by answering *El Isleo's* signals in kind, followed by one blast,* which meant for *El Isleo* to continue on up the channel and the *Eastern Glade* to remain in the channel, as her master admittedly

*It is immaterial whether the *Eastern Glade* answered *El Isleo's* signals with four blasts followed by one, as testified to by *El Isleo*, or with three blasts, as testified to by the *Eastern Glade's* master (R. 282). In either instance petitioner's signals announced that the *Eastern Glade* was holding back in the channel, as her master admits he intended to do (R. 168).

intended to do.* There was, therefore, no reason or necessity for *El Isleo* to stop and back. Petitioner's vessel was doing the stopping and backing; respondent's vessel was doing the continuing on as announced by their whistle signals.**.

In brief, whistle signals for passing with safety had been made and were understood on each vessel, and the only reason why this collision occurred is that the master of petitioner's vessel "miscalculated" either his speed or the distance and permitted his vessel to emerge from one channel into and across the other channel and into collision (R. 282).

VI. *El Isleo's* navigators acted with reasonable prudence and skill under the circumstances.

The time came when those aboard *El Isleo* were presented with two alternatives to avoid a collision, viz., she could either stop and reverse or swing to starboard out of

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* His testimony is quoted at page 7 of this brief.

** Petitioner asserts that *El Isleo* failed to allege in her pleadings that *Eastern Glade* blew four blasts and one (Brief, p. 7). They are mistaken—see *El Isleo's* answer Article 3 (R. 4). Indeed petitioner's own testimony as to whistle signals is so conflicting as to be of no value. Only one of the five witnesses who testified for petitioner agreed with the allegations of her pleadings as to whistle signals. This was her chief officer, and even he contradicted himself. First he testified that the *Eastern Glade* blew two blasts, which were answered by *El Isleo's* four, to which the *Eastern Glade* replied with four (R. 43-4). This is not in accord with the allegations of the *Eastern Glade's* libel, which are that the *Eastern Glade* sounded two blasts, which was answered about two minutes, later by *El Isleo* with a danger signal followed by one blast, to which the *Eastern Glade* replied with a danger signal (R. 2). During his cross examination Johanson added the one blast signal to *El Isleo's* answer (R. 53-54). Her third mate testified that the signals were as follows: *Eastern Glade*, two blasts, *El Isleo*, four blasts, *Eastern Glade*, three blasts (R. 123, 136). The master testified that *Eastern Glade* blew two blasts, *El Isleo* four blasts and one, *Eastern Glade* three blasts (R. 148, 159-60). The lookout testified that the signals were: *Eastern Glade*, two blasts, *Eastern Glade*, four blasts, *El Isleo*, four blasts (R. 79, 84). The quartermaster testified the same as the lookout (R. 91, 102-3).

the channel. *El Isleo* chose the latter alternative. As the pilot testified:

"Q. But you did not continue your course and speed, did you? A. When it became evident there was bound to be a collision we had to do something.

Q. And of course your change of course to starboard after you blew the alarm whistle was because of the danger of collision? A. That is correct, sir.

Q. You were hauling farther away from him? A. Trying to get away from him, that is right, sir. That was also the reason for not stopping the engines.

Q. You thought you could get ahead of him? A. We were practically in that situation. It was the only thing that we could do" (R. 220-1).

To the same effect see the testimony of the master that nothing could be gained by stopping as there was danger of sinking his ship by so doing (R. 25, 36).

The propriety of *El Isleo* swinging hard right to avoid collision is hardly open to question; the *Eastern Glade's* master admitted that this was "just the right thing" to do (R. 173).

Having chosen this alternative, i.e., to swing out of the channel under a right rudder, the greater her speed the farther she could get away from the *Eastern Glade*, which went completely across the channel, and thus avoid collision if possible. The manoeuvre adopted by *El Isleo* was in accordance with the rule prescribed by Admiral Knight for the avoidance of collision, viz.:

"She (privileged vessel) should in most cases turn away with a right rudder and keep her speed, or if possible, increase it" (Knight's Modern Seamanship, 9th Ed. p. 476).

The Courts below accordingly found that *El Isleo* acted prudently under the circumstances (R. 268). The decision is amply sustained by the authorities. *The Umbria*, 166 U. S. 404, 419; *The Hallgrim-Havre Maru*, 20 F. (2d) 720

(C. C. A. 2), 723; *The Manx Admiral*, 60 Lloyds List Law Reports 11.

The contention that *El Isleo* should have changed her course and stopped sooner are the usual ones made by the offending vessel in an attempt to shift the responsibility for collision.

In *Wilson, et al., Pacific Mail Steamship Co.*, 276 U. S. 454, the burdened vessel kept on into collision, and it was attempted to held the privileged vessel *Svea* also at fault. In exonerating the *Svea*, the Court said:

"Consideration must be given to the circumstances as they appeared at the time; not as they are now known. The *Svea* adhered to the fundamental rule. If in the difficult circumstances forced upon him her navigator, whose qualifications are not questioned, exercised his best judgment in not departing therefrom the burdened vessel must accept the consequences. Having driven him into a perplexing situation, the *Newport* cannot complain because he failed to make the most judicious choice between the hazards presented" (pp. 461-2).

In *The Ponce*, 116 Fed. 55 (S. D. N. Y.), approved in *The Munrio*, 11 F. (2d) 900 (N. D. Cal.), the Court said:

"But the offending vessel always accuses. What was done by the unoffending vessel in the high peril which the offending vessel's wrongdoing had brought shows the reverse of beneficial action. If the injured vessel moved, then she should not; if she remained at rest, she should not; if she went forward, she should have gone astern; if she reversed, it was the height of unskilfulness; and so the delinquent seeks to escape, in whole or in part, from the results of his own wrongdoing" (p. 903).

VII. If there were any errors in *El Isleo's* navigation such were errors *in extremis* for which she is not liable.

It is always a difficult question for the navigator of the privileged vessel to decide at what particular moment, if at all, he should reverse engines or change course. In the instant case the master of *El Isleo* decided that the best chance of avoiding collision was in holding her course and speed. When she reached buoy 8-M, she put her rudder hard right and ran out of the channel in an attempt to get away from the *Eastern Glade,* which had emerged from Curtis Bay Channel contrary to her signals. As the Court below said:

"The district court found that *El Isleo* was justified in holding her course and speed until she reached buoy 8 M, when she put her rudder hard right and ran to starboard out of the channel. The evidence amply supports this finding. Nor can her captain be charged with fault because *in extremis* he chose that chance of avoiding the collision instead of the chance of reversing his engines. *The Nordpol,* 2 Cir., 84 F. 2d 3" (R. 284).

It is well settled that when one ship has by wrong manoeuvres placed another in a position of danger, that other ship (*El Isleo* here) will not be held to blame even if she has not been manoeuvred with perfect skill and presence of mind. In *The Maggie J. Smith,* 123 U. S. 349, the Court said:

"The rule is well stated by counsel, that 'if one vessel is brought into immediate jeopardy by the fault of another, the fact that an order other than that which was given might have been more fortunate will not prevent the recovery of full damages'; or, as stated by the court of appeal of England, in the case of *The Bywell Castle,* L. R. 4 Prob. Div. 219, as quoted in the case of *The Elizabeth Jones,* 112 U. S. 516, 5 Supp. Ct. Rep. 468: 'Where one ship has, by wrong maneuvers placed an-

other ship in a position of extreme danger, that other ship will not be held to blame if she has done something wrong, and has not been maneuvered with perfect skill and presence of mind' " (pp. 355-6).

In *The West Point*, 85 F. (2d) 63 (C. C. A. 2), the Court said:

"That act was dictated by the best judgment of the master at the time and in an emergency. If he made a miscalculation due to conditions arising from the failure of the *Marion* to heed his warnings and to keep out of his way, he cannot fairly be held responsible for the eventuality. His error, if any, was *in extremis*" (p. 65).

See also *The Blue Jacket*, 144 U. S. 371; *The Nacoochee*, 137 U. S. 330; *Atlas Transp. Co.* v. *Lee Line Steamers*, 235 Fed. 492, 496 (C. C. A. 8); *Minnesota S.S. Co.* v. *Lehigh Valley Transportation Co.*, 129 Fed. 22, 28 (C. C. A. 6); *The Columbia*, 109 Fed. 660 (C. C. A. 9); *The City of Augusta*, 80 Fed. 297 (C. C. A. 1); *The Pacific*, 154 Fed. 943 (C. C. A. 3); *The Chatham*, 52 Fed. 396 (C. C. A. 4).

VIII. The faults of the *Eastern Glade* are so patent and so fully account for the collision that any doubt as to *El Isleo's* navigation should be resolved in her favor.

The collision is fully accounted for by the gross negligence of petitioner's vessel in continuing on into and across Fort McHenry Channel in the face of unfavorable wind and tide conditions with full knowledge that *El Isleo* was proceeding up Fort McHenry Channel. As the Court below said:

"The fault of the *Eastern Glade* was glaring and was alone sufficient to account for the disaster; hence any slight doubt as to the propriety of *El Isleo's* navigation should be resolved in her favor. *The City of New York*, 147 U. S. 72, 85" (R. 284).

In *The City of New York*, 147 U. S. 72, this Court said:

"In view of the recklessness with which the steamer was navigated that evening, it is no more than just that the evidence of contributory negligence on the part of the sailing vessel should be clear and convincing. Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption at least adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor" (p. 85).

The Cranford, 27 F. (2d) 710 (C. C. A. 2), the Court said:

"The *Cranford* was clearly at fault in violating the starboard hand rule, requiring her to keep out of the way of the privileged vessel. She should not have attempted to cross ahead of her. *The Delaware*, 161 U. S. 459; *The Britanica*, 153 U. S. 130; *The Binghamton* (C. C. A.), 271 F. 69; *The Musconetcong* (C. C. A.), 255 F. 675. Her

fault was so great, in persistently violating this rule, that any doubt of fault on the part of the *Cumberland* should be construed in her favor. *City of New York*, 147 U. S. 72; *The Binghamton* (C. C. A.) 271 F. 69; the *Persian* (C. C. A.) 224 F. 441" (p. 712).

See also: *The Victory* and *The Plymothian*, 168 U. S. 410; *The Ashbourne*, 181 Fed. 815 (C. C. A. 2); *The Fort St. George*, 27 F. (2d) 788 (C. C. A. 2); *The Persian*, 224 Fed. 441 (C. C. A. 2).

IX. The decrees below should be affirmed.

CHAUNCEY I. CLARK,
BURTON H. WHITE,
Counsel for Southern Pacific Company, Respondent.

Dated, New York,
November 11, 1939.

APPENDIX A

Inland Rules of Navigation

Article 18, Rule I. Meeting situation.

When steam vessels are approaching each other head and head—that is, end on, or nearly so—it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other. But if the courses of such vessels are so far on the starboard of each other as not to be considered as meeting head and head, either vessel shall immediately give two short and distinct blasts of her whistle, which the other vessel shall answer promptly by two similar blasts of her whistle, and they shall pass on the starboard side of each other.

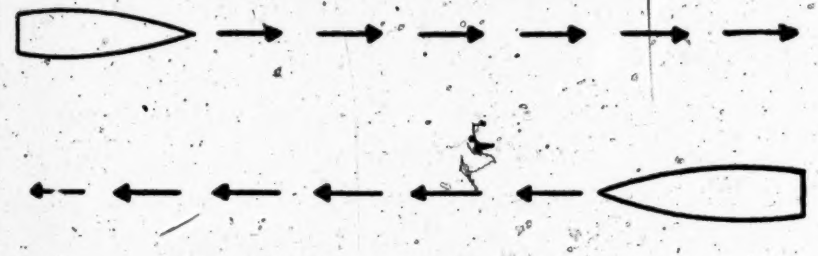
The foregoing only applies to cases where vessels are meeting end an or nearly end on, in such a manner as to involve risk of collision; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own, and by night to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course, or by night to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead" (Navigation Laws of the United States, 1935, p. 253).

Meeting situation—head and head.

Meeting situation—port to port.

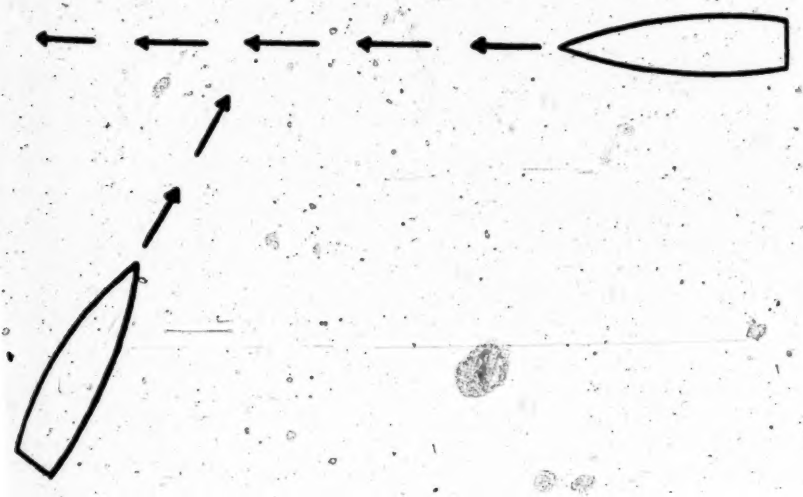
Meeting situation—starboard to starboard.



Article 19. Crossing situation. Burdened vessel to keep out of the way when two steam vessels are crossing.

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (June 7, 1897, sec. 1—33 U. S. C. 204) (Navigation Laws of the United States, 1935, p. 255)

Crossing situation.



Article 21. Crossing situation. Privileged vessel to keep her course and speed.

Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed. (June 7, 1897, sec. 1—33 U. S. C. 206.) [See arts. 27 and 29.] (Navigation Laws of the United States, 1935, p. 255)

Article 22. Burdened vessel avoid crossing ahead.

Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (June 7, 1897, sec. 1—33 U. S. C. 207.) (Navigation Laws of the United States, 1935, p. 255)

Article 23. Burdened vessel to slacken speed, stop or reverse.

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed, or stop or reverse. (June 7, 1897, sec. 1—33 U. S. C. 208.) (Navigation Laws of the United States, 1935, p. 255)

Article 18, Rule III. Danger or alarm signal.

If, when steam vessels are approaching each other, either fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle." (Navigation Laws of the United States, 1935, p. 253)

Note: This rule has been interpreted by the Courts to cover a disagreement with the proposal of another vessel. *Merritt-Chapman & Scott Corporation* v. *Texas Co.*, 98 F. (2d) 719 (C. C. A. 2); *The San Simeon*, 63 F. (2d) 798 (C. C. A. 2).

Article 28. Three blasts indicates engines going full speed astern.

When vessels are in sight of one another a steam vessel under way whose engines are going at full speed astern shall indicate that fact by three short blasts on the whistle. (June 7, 1897, sec. 1—33 U. S. C. 213.) (Navigation Laws of the United States, 1935, p. 256)

Article 27. General prudential rule.

In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (June 7, 1897, sec. 1—33 U. S. C. 212.) (Navigation Laws of the United States, 1935, p. 256)

Article 29. Special circumstance rule.

Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (June 7, 1897, sec. 1—33 U. S. C. 221.) (Navigation Laws of the United States, 1935, p. 256)

Article 32. Helm orders.

Right rudder to mean "Direct the vessel's head to starboard."

Left rudder to mean "Direct the vessel's head to port." (June 7, 1897, sec. 1; Aug. 21, 1935, sec. 2—33 U. S. C. 232.) [The provisions of Art. 32 become effective on Jan. 1, 1937—Act Aug. 21, 1935, sec. 5.] (Navigation Laws of the United States, 1935, p. 257)

International Rules

Article 28. Meaning of one-blast, two-blast and three-blast signals.

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going at full speed astern." (Aug. 19, 1890, sec. 1—33 U. S. C. 113.) (Navigation Laws of the United States, 1935, p. 245)

Supervising Inspectors' Rules.

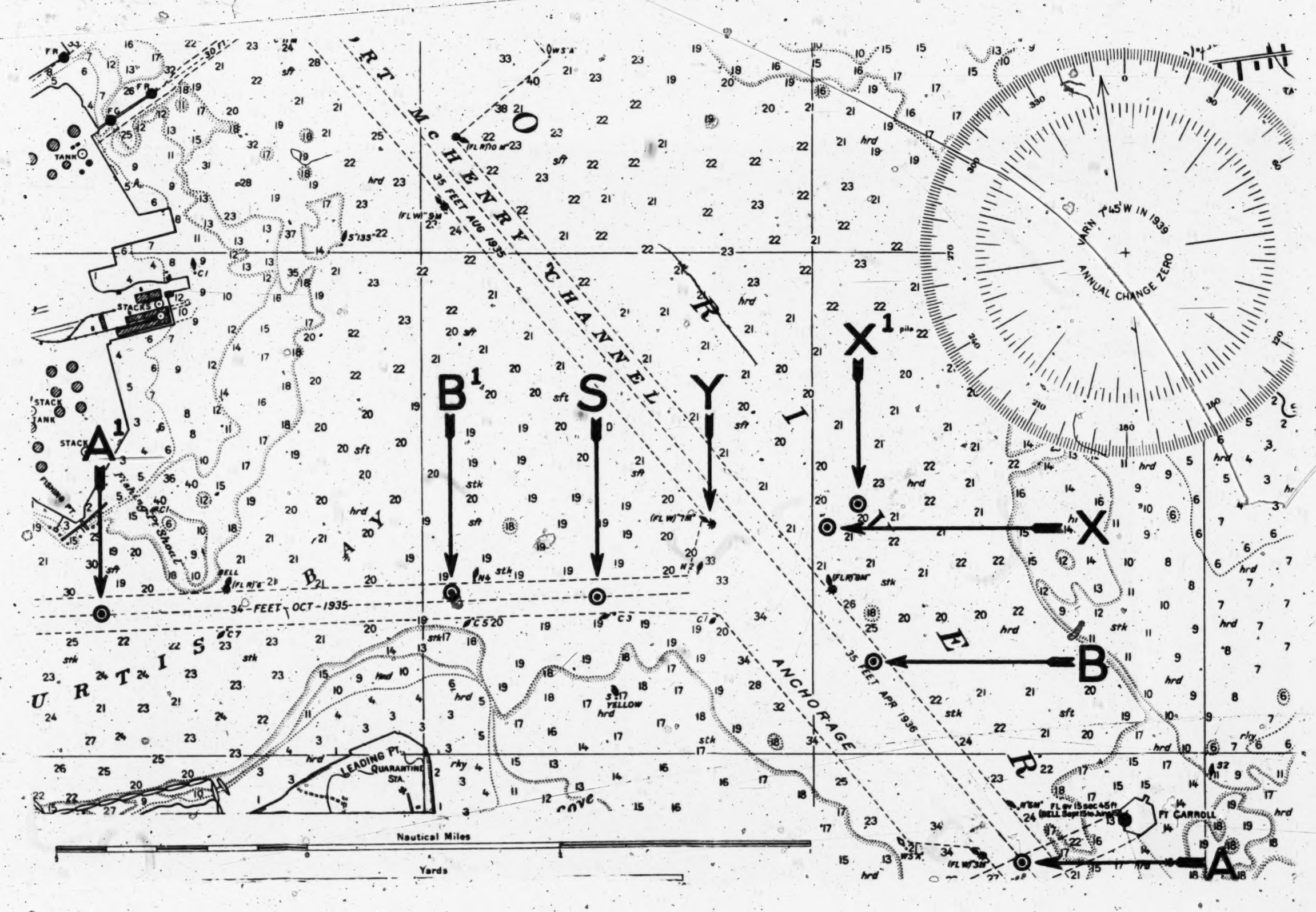
Rule II. Steam vessels are forbidden to use what has become technically known among pilots as "CROSS SIGNALS", that is, answering one whistle with two, and answering two whistles with one.

Rule III. The *signals for passing,* by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head", or nearly so, but at all times when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

The whistle signals provided in the rules for steam vessels meeting, passing, or overtaken are never to be used except when steam vessels are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mists, falling snow, or heavy rainstorms, when vessels can not so see each other, fog signals only must be given.

Rule VII. When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary until signals for passing with safety are made and understood.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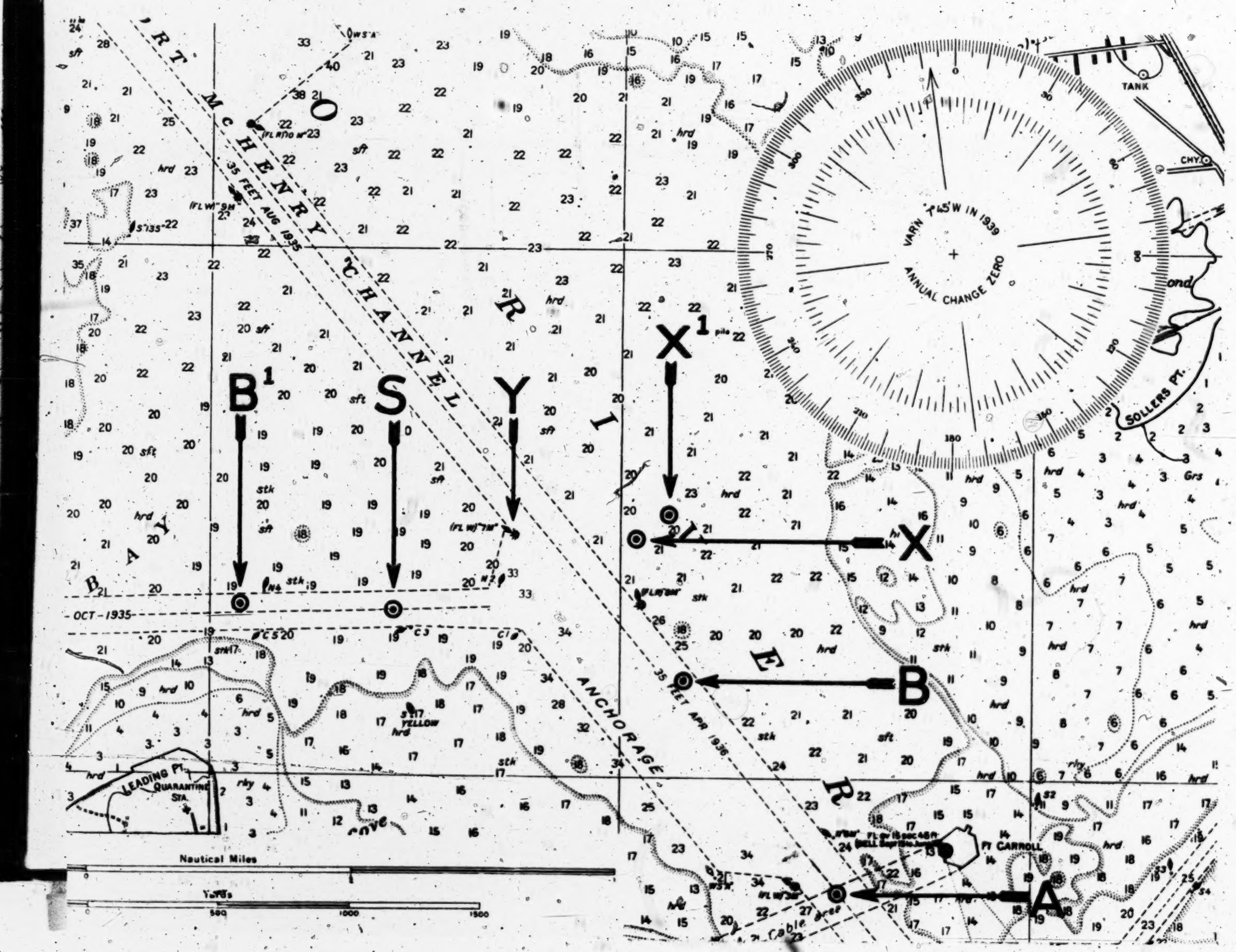
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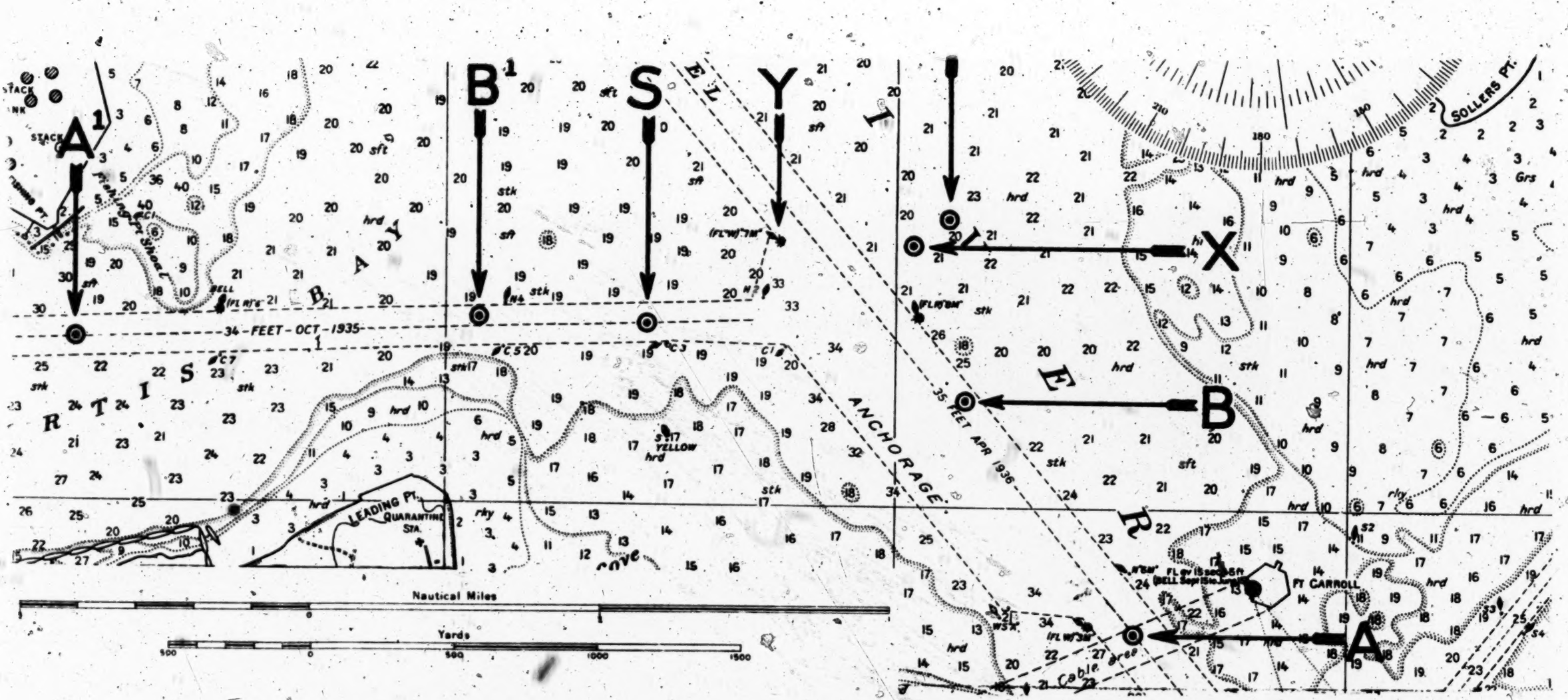

LEGEND

A—Position of *El Isleo* when *Eastern Glade* was first observed (R. 197, 209-10, marked E on Exhibit A).

A¹—Position of *Eastern Glade* when first seen by *El Isleo* (R. 210, marked F on Exhibit A).

B—Position of *El Isleo* when she blew four blasts followed by one in answer to *Eastern Glade's* two blasts (R. 200-1, marked A on Exhibit A).

B¹—Position of *Eastern Glade* when she blew two blasts (R. 201, marked B on Exhibit A).

S—Position of the *Eastern Glade* (according to her master's testimony) when she stopped her engines (R. 149, marked "stop" on Exhibit 9).

X—200 yards east of Fort McHenry Channel referred to by Court below as about place of collision (R. 282-3).

X¹—Place of collision marked by *El Isleo's* pilot with letter C on Exhibit A (R. 203).

Y—Buoy 7 M.

SUPREME COURT OF THE UNITED STATES.

Nos. 73, 74.—October Term, 1939.

Postal Steamship Corporation, Petitioner, vs. Steamship El Isleo, etc., Southern Pacific Company, Claimant.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
Postal Steamship Corporation, Petitioner, vs. Southern Pacific Company.	

[January 2, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The steamer Eastern Glade, owned by petitioner, collided with the steamer El Isleo, owned by respondent, in the waters of Baltimore harbor. Each owner filed a libel against the vessel of the other. The District Court found that the Eastern Glade was solely at fault (20 F. Supp. 373) and decrees dismissing petitioner's suit and awarding damages to respondent were affirmed by the Circuit Court of Appeals. 101 F. (2d) 4. In the view that there was involved an important question of maritime law which had not been, and should be, settled by this Court, certiorari was granted. October 9, 1939.

That question is said to arise from rulings of the Circuit Court of Appeals with respect to the validity of Rules II and VII of the Board of Supervising Inspectors[1] in the light of the applicable provisions of the Act of Congress.[2] See *The Fulton*, 54 F. (2d) 467, 468.

[1] "Pilot Rules for Certain Inland Waters", etc., effective, as amended, May 1, 1912.

[2] Inland Rules, Act of June 7, 1897, Arts. 19, 21-23, 27, 30 Stat. 101, 102; U. S. C. 204, 206-208, 212.

The facts are thus stated by the Circuit Court of Appeals:

"The collision occurred in the waters of Baltimore Harbor near the junction of Curtis Bay Channel with Fort McHenry Channel. The latter is about 600 feet wide and runs in a northwesterly direction towards Baltimore; the former running nearly east and west, comes into Fort McHenry Channel from the west but does not cross it. The night was clear, the tide ebb, and a 15 mile breeze was blowing from the northwest. The steamship Eastern Glade, light, was bound out of Curtis Bay Channel and was intending to turn left into Fort McHenry Channel and proceed to Baltimore. The steamer El Isleo, laden with 1,000 tons of steel ore, also bound for Baltimore, was proceeding up Fort McHenry Channel at full speed—about eight miles through the water as she was working only one boiler. When the vessels sighted each other they were more than a mile apart, the El Isleo being about four points on the starboard bow of the Eastern Glade. The latter stopped her engines and shortly thereafter sounded a two blast signal to indicate, as her master says, that his course was to the left and up Fort McHenry Channel. El Isleo answered the two blast signal with an alarm followed by one blast to indicate that she would keep her course and speed. Captain Korn of El Isleo testified that the Eastern Glade responded with four blasts followed by one, while her captain says she responded with three blasts to indicate that she was reversing her engines. El Isleo kept on until she reached a buoy just opposite Curtis Bay Channel, when, believing collision imminent, she put her rudder hard right and swung out of Fort McHenry Channel to her starboard. The Eastern Glade, although her master testified that he intended to hold back in Curtis Bay Channel until El Isleo had passed the junction, came clear across Fort McHenry Channel and brought her stem into contact with the port side of El Isleo about amidships. The place of collision was east of Fort McHenry Channel. The district court did not determine how far to the east, but McDonald testified it was about 200 yards".

After referring to the question whether the vessels were on crossing courses as the district court had held, or whether the situation was one of special circumstances, as petitioner contended, the Court of Appeals continued:

"It is not disputed that El Isleo's course up Fort McHenry Channel was always apparent to the Eastern Glade. But the latter's course was not immediately apparent to El Isleo; when the Eastern Glade should reach the end of Curtis Bay Channel, she might turn left, she might turn right, or she might conceivably, though improbably, cross Fort McHenry Channel, since there was water enough to the East of that channel, although neither pier, port nor anchorage to which she might be bound appears on the chart. When

however, she sounded her two blast signal, she indicated an intention either to cross the bows of El Isleo by proceeding across Fort McHenry Channel, or to turn to the left and proceed up that channel. The former alternative would clearly result in crossing courses, the latter would result in converging courses, since the Eastern Glade's course, if projected, would carry her into the starboard lane of Fort McHenry Channel, unless she violated her duty by going up on the wrong side. Such converging courses involve the very risk that resulted in the collision and the rights and duties of the vessels are governed by Articles 19, 22 and 23 of the Inland Rules, 33 U. S. C. A., §§ 204, 207, 208. . . . Accordingly, the district court was right in treating the situation as one of crossing courses".

The Articles of the Inland Rules established by Congress[3] provide:

"Art. 19. When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

"Art. 21. Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed.

"Art. 22. Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case, admit, avoid crossing ahead of the other.

"Art. 23. Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Applying these statutory provisions, and viewing the situation as one of "crossing courses", the Court of Appeals found that no fault appeared in the navigation of El Isleo, the "privileged vessel". The fault of the Eastern Glade was found to be glaring and alone sufficient to account for the disaster.

Petitioner does not contest the ruling that the Eastern Glade was at fault but insists that the El Isleo was also at fault. Petitioner argues that El Isleo violated Rules II and VII of the Supervising Inspectors, purporting to have been adopted under the authority of the statute.[3] These rules are as follows:[4]

"Rule II. Steam vessels are forbidden to use what has become technically known among pilots as 'cross signals', that is, answering one whistle with two, and answering two whistles with one.

"Rule VII. When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other

[3] Act of June 7, 1897, c. 4, sec. 2, 30 Stat. 102; 33 U. S. C. 157.

[4] See Note 1.

than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

"If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood".

Petitioner says that these rules are not inconsistent with the statute and have the force of law; that they provide in substance "that where the so-called privileged vessel in a crossing situation receives an unacceptable proposal to cross ahead, the privileged vessel may not maintain her course and speed until collision becomes imminent but must at once sound danger signals and stop and back if necessary until a safe passage has been agreed upon." Hence, it is argued, that El Isleo was required to "stop, and reverse if necessary," when the Eastern Glade sounded her two-blast signal, and that the only question here is as to the validity of the Inspectors' requirements.

Respondent contends that the statutory provisions of Articles 19-23 govern; that it was not only the privilege but the duty of El Isleo to "keep her course and speed"; that it was not the intention of the Supervising Inspectors to modify that affirmative duty; that El Isleo was not bound to agree to the two-blast signal from the Eastern Glade; that the signals had been made and were understood by each vessel and the collision was due to the miscalculation of the master of the Eastern Glade; and that if there were any errors in El Isleo's navigation they were errors *in extremis* for which she is not liable.

The Inspectors' prohibition against "cross signals", found in Rule II, was originally applicable to "vessels approaching each other from opposite directions"[5] but was amended so that its terms apply to crossing situations as well.[6] *The Fulton, supra.*

[5] See Rule III, "Pilot Rules for Atlantic and Pacific Coast Inland Waters", edition October 23, 1906.

[6] See Rule II, edition July 1, 1907; edition May 1, 1912.

But the Court of Appeals in a number of decisions involving crossing situations has disregarded the Inspectors' rule and has "exonerated a vessel which pressed her statutory privilege by crossing the signal and holding her course and speed".[1] *Id.* It is unnecessary to review the many cases which the present parties cite, as the court itself has summarized its position:

"Our reasoning has been that, as the statute (Inland Rules) article 21 (33 U. S. C. A., § 206), puts a duty upon the privileged ship to keep her course and speed, no rule can be valid which affects to relieve her of it, and that she may announce her determination to insist by crossing the first signal. The doctrine has been too long and too repeatedly established to allow any question now, but it is plain that the inspectors have never assented to it". *Id.*

Although the Court of Appeals, after making this statement in *The Fulton*, said that, as the court was then constituted, it could not see any necessary inconsistency between the Inspectors' rule and the statute, the court concluded that "unless the Supreme Court chooses finally to settle the whole matter otherwise", it had no option "in crossing situations" and would "continue to disregard the rule". *The Fulton*, however, presented a "head-on situation", and the Court of Appeals, feeling that it was not committed in such a case, decided that the steamship there in question was "at fault for crossing the signal". *Id.*, p. 469.

In the instant case, the Court of Appeals again referred to the rule as established in the second circuit, "that in a crossing situation the privileged vessel may 'cross' the signal of the burdened vessel and hold her course and speed until it becomes evident that the burdened vessel either cannot or will not keep out of the way". And the court observed that although this rule was criticised in *The Fulton*, it was thought to be "too firmly established to be departed from until the Supreme Court speaks". The court added that it still adhered to that view. 101 F. (2d), p. 6.

We may assume that the Supervising Inspectors had no intention to depart from the statute under which they claimed authority to make their regulations. And Articles 19-23 of the statute are to

[1] In the Fulton, 54 F. (2d) p. 468, the Circuit Court of Appeals cited to this effect The John King, 49 Fed. 469; The Cygnus, 142 Fed. 85; The Transfer No. 15, 145 Fed. 503; The John H. Starin, 162 Fed. 146; The Montauk, 190 Fed. 697; The Ashley, 221 Fed. 423.

be read in the light of Article 27 which has the following controlling qualification:

"Art. 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger".

Moreover, the Inspectors expressly recognize and follow the statute in providing in Rule VII, first paragraph, that "the steam vessel which has the other on her own port side shall hold her course and speed; and "the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse". The second paragraph of Rule VII, providing for the stoppage and backing of both vessels if necessary "until signals for passing with safety are made and understood", was clearly intended to apply to the dangerous situation envisaged in Article 27 of the statute.

The grounds for criticising the rulings of the Court of Appeals of the second circuit in disregarding the Inspectors' requirement cannot be better stated than in the court's own language in *The Fulton*. After referring to its former decisions, by which it felt itself bound, the court observed that "concededly there comes a time when the privileged vessel must yield"; that there is never a "right of way into collision"; that the point at best "is one of degree"; and that if the question were *res integra* the Inspectors' rule would be held valid. The court continued: "The inspectors apparently believe that in the greater number of cases it will conduce to collision to allow a pilot to keep on in the face of a proposal by the approaching vessel that she put herself across his bows. True, the proposer often will not act without consent; but it is certainly possible that prudence forbids speculation as to whether he has still time or disposition to keep out of the way. Again and again cases arise in which the proposal is repeated, the vessels coming nearer all the time; sometimes it is repeated even after it has been crossed by a refusal. No substantial interest is at stake except to escape collision which will certainly be avoided if both stop". Stopping "is more likely to avoid disaster than going on in the teeth of what is at least a proposal, and may be a declaration". So, the court thought that the situation was a proper one "fo. the exercise of the inspectors' function in providing for cases

not covered explicitly". The court could not see "any conflict with the statute, unless that be read without regard to its purpose". For Articles 19 and 21 "do not require any signals at all"; and "if one is given proposing a dangerous course", the court thought it "too verbal and rigid an interpretation to say that the privileged vessel is inevitably still bound; at least officials, vested with general authority, are not helpless to meet the situation by a rule". And after noting that Article 27 of the statute authorized a departure "to avoid immediate danger", the court posed the question —"Can it be that though vessels themselves may so depart, the inspectors may not say that a situation likely to be dangerous shall be treated as such?"

We are in accord with the criticism thus effectively expressed by the Court of Appeals of its established rule, and we think that the court should be relieved of its assumed obligation to follow its former decisions holding the Inspectors' requirement invalid. We think that Inspectors' Rule II should be read in connection with their Rule VII and that both should be construed in the light of the statutory provision in Article 27..

The plain purpose of the Inspectors' Rules is to minimize the danger of collision. The so-called privileged vessel has no absolute right to keep her course and speed regardless of the danger involved in that action. Her right to maintain her privilege ends when there is danger of collision and in the presence of that danger both vessels must be "stopped and backed if necessary, until signals for passing with safety are made and understood".

In *The Quogue*, 47 F. (2d) 873, where the Court of Appeals of the second circuit had before it a "head-on situation", the court condemned a vessel "for crossing signals and insisting upon her rights". That vessel was The Transfer and the right insisted upon was that of port to port passage. The fault of the other vessel, The Quogue, in undertaking to cross the bow of The Transfer was found to be "most glaring", but The Transfer was also held at fault because her master was not justified in acting on the assumption that The Quogue would not carry out the maneuver indicated by her signals unless he consented. He did not "reverse as promptly as he should", for when the dangerous situation was presented "he was not privileged to continue on his course on the chance that the other vessel would change her announced purpose if he refused to

consent". The Court of Appeals aptly said: "It is a hard rule which requires a master when he sees another vessel about to cross his bow with wanton disregard of his rights to stop and allow the arrogant usurper to pursue his wrongful course. But safety is better than pride; and however slight the hope that rules to promote safety will be observed under such circumstances, whatever courts may say, the vessels must be judged according to their legal duties".

The Court of Appeals in *The Fulton* considered these observations in *The Quogue* to be pertinent, and we think that they are pertinent to a dangerous situation arising in connection with crossing courses. We see no sufficient ground for a distinction in upholding and applying the Inspectors' requirements in such cases.

We deal simply with the question presented with respect to the validity of the Inspectors' rules here in question. We hold these rules are not essentially inconsistent with the statute and are valid, both the statutory provisions and the Inspectors' Rules being designed to promote safety in situations fraught with danger. We do not pass, or intimate any opinion, upon the particular facts of the instant case, as it is the appropriate province of the Court of Appeals to deal with these. As the Court of Appeals apparently did not consider the conduct of El Isleo in the light of the Inspectors' requirements, but thought, under the compulsion of its former decision, that it must disregard those requirements, we think that the cause should be returned to the Court of Appeals to be decided by it, free of that compulsion.

To afford that freedom we reverse the judgments and remand.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.